

REMARKS

Claims 1-26 are pending in the application. In the final Office Action of August 9, 2005, the Examiner made the following disposition:

- A.) Rejected claim 25 under 35 U.S.C. §112, second paragraph.
- B.) Rejected claims 5, 7-10, 14-17, 22, and 24-25 under 35 U.S.C. §102(e) as being allegedly anticipated by *He, et al. (U.S. Patent No. 6,671,259)*.
- C.) Rejected claims 1-4, 6, 11-13, 18-21, 23, and 26 under 35 U.S.C. §103(a) as being allegedly unpatentable over *He, et al. (U.S. Patent No. 6,671,259)*.

Applicants respectfully traverse the rejections and address the Examiner's disposition below.

- A.) Rejection of claim 25 under 35 U.S.C. §112, second paragraph:

Claim 25 has been amended as per the Examiner's request to overcome the rejection.

Applicants submit the rejection has been overcome and request that it be withdrawn.

- B.) Rejection of claims 5, 7-10, 14-17, 22, and 24-25 under 35 U.S.C. §102(e) as being allegedly anticipated by *He, et al. (U.S. Patent No. 6,671,259)*:

Applicants respectfully disagree with the rejection.

Independent claim 5, as amended, claims a method in a data processing system having a first load balancing server and a second load balancing server and having a plurality of processing servers. The second load balancing server assigns the first load balancing server to receive a request from a client to perform a processing. The first load balancing server receives the request to perform the processing. The first load balancing server sends the request to the second load balancing server. The second load balancing server determines a load of each of the plurality of processing servers, and selects a selected one of the plurality of processing servers that is suitable for performing the processing.

Similarly, independent claim 14 claims a data processing system comprising a plurality of processing servers; a client that sends a request to have processing performed in a load balanced manner; and a first load balancing server that is assigned by the second load balancing server to receive the request from the client and that receives the request from the client; and a second load balancing server that receives the request from the first load balancing server.

Independent claim 22 claims a computer-readable medium containing instructions that cause a data processing system to perform a method having steps similar to the steps of claim 5.

Therefore, claims 5, 14, and 22 each claim subject matter relating to a first load balancing

server that is assigned by a second load balancing server to receive a request to perform processing and sends the request to the second load balancing server, which selects a processing server to perform the processing.

This is clearly unlike *He*, which fails to disclose or suggest a first load balancing server that is assigned by a second load balancing server to receive a request to perform processing and sends the request to the second load balancing server, which selects a processing server to perform the processing. Referring to *He* Figure 1, *He* discloses a system having a plurality of load balancing servers LB 1-LB N. The system also has a load balancing selector LBS. A request to perform processing is received at the load balancing selector LBS, which sends the request to a determined load balancing server, such as LB 1. (*He* 3:65-4:4). The load balancing server then chooses a server to perform the processing.

He's load balancing selector LBS can be a standalone device or implemented within a device that shares one or more load balancing servers LB. However, applicants note that in this latter case, the requests are still received by the load balancing selector LBS (and not a load balancing server LB) and sent to a load balancing server LB. (*He* 10:33-67).

Thus, *He's* load balancing selector LBS fails to disclose or suggest Applicants' claimed first load balancing server, because *He's* load balancing selector LBS *is not assigned by a second load balancing server* to receive a request from a client. Nowhere does *He* suggest that its load balancing selector LBS is assigned by a load balancing server to receive a request. Instead, *He's* load balancing selector LBS receives all requests and forwards them to a load balancing server LB.

Further, *He* fails to disclose or suggest a first load balancing server that receives a request and send the request to a second load balancing server. As described above, *He's* load balancing selector LBS receives all request to perform processing -- not a load balancing server LB. *He's* load balancing selector LBS receives a request and then sends the request to a determined load balancing server. For at least this reason, *He* fails to disclose or even suggest claims 5, 14, and 22.

The Examiner argues that *He's* load balancing selector LBS is a load balancing server LB, however, Applicants respectfully disagree. *He* clearly teaches that its load balancing selector LBS and load balancing server LB are two different things. *He's* load balancing selector LBS is not a load balancing server LB. The load balancing selector LBS selects a load balancing server LB. And the load balancing server LB is a server that performs load balancing. *He* describes:

As is discussed more fully below, the LB server balances network

traffic and load amongst the servers of a group of servers. The LBS selector, on the other hand, determines which LB server is responsible for balancing loads for which groups of servers.

He 3:41-46.

Throughout *He*, the load balancing selector LBS and load balancing server LB are discussed as two distinct items. Nowhere does *He* even suggest that its load balancing selector LBS is a load balancing server LB.

The Examiner recites a dictionary definition for “server” (instead of “load balancing server”) as support for the Examiner’s argument that *He*’s load balancing selector LBS is a load balancing server LB. However, the Examiner ignores that *He*’s specification fails to teach that its load balancing selector LBS is a server, let alone a load balancing server. Applicants respectfully submit that the Examiner ignores what is taught by *He* and fails to recite a related dictionary definition. *Phillips v. AWH, et al.*, No. 03-1269 (Fed. Cir. July 12, 2005) (en banc), teaches that it is proper to first look to the specification when construing claims, not extrinsic evidence such as dictionary definitions. In this case, *He*’s specification clearly teaches that its load balancing selector LBS is not a load balancing server LB.

Thus, for at least the reasons discussed above, Applicants submit that *He* fails to disclose or suggest claims 5, 14, and 22.

Claims 7-10, 15-17, and 24-25 depend directly or indirectly from claims 5, 14 or 22 and are therefore allowable for at least the same reasons that claims 5, 14, and 22 are allowable.

Applicants submit the rejection has been overcome and request that it be withdrawn.

C.) Rejection of claims 1-4, 6, 11-13, 18-21, 23, and 26 under 35 U.S.C. §103(a) as being allegedly unpatentable over *He, et al.* (U.S. Patent No. 6,671,259):

Applicants respectfully disagree with the rejection.

Similar to claim 5, independent claims 1, 11, 18, and 26 each claim subject matter relating to a load balancing slave that is assigned by a load balancing master to receive a request to perform processing and sends the request to the load balancing master, which selects a processing server to perform the processing.

This is clearly unlike *He*, which fails to disclose or even suggest or even suggest a load balancing slave that is assigned by a load balancing master to receive a request, receives the request, and sends the request to a load balancing master, which selects a processing server to perform the processing. As discussed above, *He* discloses a system having a plurality of load balancing servers LB 1-LB N, as well as a load balancing selector LBS. A request to perform

processing is received at the load balancing selector LBS, which sends the request to a determined load balancing server, such as LB 1. (*He* 3:65-4:4). The load balancing selector LBS can be a standalone device or implemented within a device that shares one or more load balancing servers. However, applicants note that in this latter case, the requests are still received by the load balancing selector LBS and sent to a load balancing server LB. (*He* 10:33-67).

Thus, *He's* load balancing selector LBS fails to disclose or suggest Applicants' claimed load balancing slave, because *He's* load balancing selector LBS *is not assigned by a load balancing master* to receive a request from a client. Nowhere does *He* suggest that its load balancing selector LBS is assigned by a load balancing master to receive a request. Instead, *He's* load balancing selector LBS receives all requests and forwards them to a load balancing server LB.

Further, *He* fails to disclose or suggest a load balancing slave that receives a request from a client. Instead, *He* teaches a load balancing selector LBS that receives a request and sends the request to a determined load balancing server. In other words, the request is not received at a load balancing slave, but is instead received at the load balancing selector LBS. For at least this reason, *He* fails to disclose or even suggest claims 1, 11, 18, and 26.


Claims 2-4, 6, 12, 13, 19-21 and 23 depend directly or indirectly from claims 1, 11, or 18 and are therefore allowable for at least the same reasons that claims 1, 11, and 18 are allowable.

Applicants submit the rejection has been overcome and request that it be withdrawn.

CONCLUSION

In view of the foregoing, it is submitted that claims 1-26 are patentable. It is therefore submitted that the application is in condition for allowance. Notice to that effect is respectfully requested.

Respectfully submitted,

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